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IN THE UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA -- SAN FRANCISCO DIVISION

MARCIANO PLATA, et al.,

Plaintiffs,

v.

ARNOLD SCHWARZENEGGER, et al.,

Defendants.

C-01-1351 TEH

**DECLARATION OF SCOTT
KERNAN IN SUPPORT OF
DEFENDANTS' REPORT IN
RESPONSE TO THE
COURT'S FEBRUARY 15,
2007 ORDER**

I, Scott M. Kernan, declare as follows:

1. I am currently the Chief Deputy Secretary of the Division of Adult Institutions for the California Department of Corrections and Rehabilitation (CDCR), which is tasked with the

Decl. Kernan Supp. Defs.' Report

Plata, et al. v. Schwarzenegger, et al.
C-01-1351 TEH

1 operation of California's prisons, correctional facilities, and adult parole. Before becoming the
2 Chief Deputy Secretary, I held the positions of Deputy Director, and later Acting Director of the
3 Division of Adult Institutions. This declaration is submitted in support of Defendants' Report in
4 Response to the Court's February 15, 2007 Order. All matters set forth in this declaration are
5 personally known to me and if sworn as a witness in this matter, I could and would testify
6 competently as to all matters set forth in this declaration.

7 2. In November 2005, I was reassigned from my position as Warden at California State
8 Prison-Sacramento to CDCR headquarters to serve as Deputy Director of the Division of Adult
9 Institutions. As the Deputy Director, I oversaw the development of alternative solutions to the
10 overcrowding problem. These efforts included a comprehensive analysis of existing CDCR
11 beds, programming space, clinical/mental health space, infrastructure capacities, and projected
12 mitigation. I also conducted an analysis of additional capacity available within existing in-state
13 private prison facilities, evaluated potential capacity within the Department of Mental Health and
14 the Department of Juvenile Justice, expansion of female capacity in private facilities, expansion
15 of capacity at existing prisons ("in-fill"), and an analysis of reactivating a previously
16 decommissioned facility in Stockton, California.

17 3. Housing inmates in non-traditional quarters presents serious safety concerns for both
18 the inmates and correctional staff. The overcrowding of CDCR facilities has led to increased
19 numbers infectious disease outbreaks and riots and disturbances system-wide.

20 For example, infectious disease outbreaks have included a possible NoroVirus outbreak at
21 California State Prison, San Quentin (San Quentin); Hepatitis A and Varicella (Chicken Pox)
22 outbreaks at Wasco State Prison (Wasco); a possible Chicken Pox outbreak at California State
23 Prison, King-Avenal (Avenal) and the Correctional Training Facility (CTF) as well; suspected
24 Tuberculosis, Chicken Pox, and Gastroenteritis outbreaks at California State Prison, Solano
25 (Solano); Gastroenteritis and a possible Tuberculosis exposure at California State Prison, Los
26 Angeles County (Lancaster); and Chicken Pox and possible Tuberculosis exposure at the
27 California Substance Abuse Treatment Facility & State Prison (SATF). Because of these
28

1 infectious disease outbreaks, institutions were forced to adopt a modified program, or in extreme
2 instances, lockdown, to contain the spread of the outbreak.

3 Additionally, overcrowding in CDCR prisons has also led to increased riots and
4 disturbances. For instance, riots in different facilities at Avenal caused the prison to spend a
5 combined 34 days on modified program; riots and disturbances at the California Correctional
6 Center caused the prison to go on modified program or lockdown for a combined 324 days, with
7 two facilities remaining on lockdown or modified program since March 5, 2007; all facilities at
8 Calipatria State Prison remained on lockdown or modified program for 552 days following the
9 attempted murder of a peace officer; and as a result of a riot in Facility B at Wasco on December
10 30, 2002, that facility remained on modified program for 1,435 days. These riots deflect prison
11 resources so that while correctional officers now must respond to the increased security concerns
12 and maintain watch over an increasingly dangerous prison population, they are not able to assist
13 the Receiver's efforts in addressing the inmates' medical concerns by escorting inmates to
14 medical appointments, for instance.

15 4. On April 26, 2007, in response to California's prison overcrowding crisis, the
16 California Legislature enacted, and Governor Schwarzenegger signed into law on May 3, 2007,
17 Assembly Bill 900 (AB 900) which is directed at reducing California's prison population. AB
18 900 will reduce prison overcrowding through four measures: (1) through the out-of-state transfer
19 of inmates, (2) by creating in-fill beds, (3) by establishing more community re-entry beds, and (4)
20 by creating more medical and mental health beds. These four measures are also directed at
21 reducing CDCR's use of "non-traditional beds" or beds that are used to house inmates in areas
22 that were neither designed nor intended for inmate housing, including in areas such as
23 gymnasiums, day rooms, program rooms, and triple bunk beds. Further, AB 900 also provides
24 for the creation of approximately 13,000 county jail beds.

25 5. CDCR projects, based on Spring 2007 published projections, the May 2007 population
26 to be approximately 162,848 male and 12,141 female inmates, for a total prison population of
27 approximately 174,989 inmates. CDCR anticipates housing 164,599 male inmates and 12,200
28 female inmates (176,799 total) in March 2008, and 167,614 male inmates and 12,562 female

1 inmates (180,176 total) in March 2009. These projected figures do not account for the impact
2 that AB 900 and other population reduction strategies (including parole population reduction
3 strategies described in paragraphs 15 through 21) will have on the prison population, as described
4 below.

5 6. CDCR also proposed in the May Revision the establishment of approximately 4,500 beds
6 in Female Rehabilitative Community Correctional Centers (FRCCC). These facilities will house
7 non-serious, nonviolent women offenders. The FRCCC's were developed specifically for
8 California using the National Institute of Corrections' Gender-Responsive Strategies: Research,
9 Practice, and Guiding Principles for Women Offenders (Bloom, Owen & Covington, 2003) as a
10 foundation for the program design. Services will include, but not be limited to: substance abuse
11 education and treatment, physical and mental health care, trauma treatment, education, vocational
12 training, life skills, cultural competency, parenting and family reunification, and reentry
13 assistance. These facilities, upon approval, are scheduled to begin occupancy in April 2008. The
14 FRCCC's will eliminate all non-traditional beds for the female population with the first
15 activation in April 2008 and with subsequent activations to address any growth in this population
16 beyond 2015-2016. These new beds will reduce CDCR's female population by one-third and
17 perhaps allow CDCR to convert current female prisons into male capacity, thus effectively
18 relieving male prison overcrowding as well.

19 7. To reduce overcrowding in California prisons statewide, CDCR currently plans to
20 begin the involuntary transfer of inmates to either in-state private facilities or out-of-state
21 facilities starting in June 2007. CDCR will pursue all in-state transfer opportunities before
22 initiating out-of-state transfers to the extent possible. CDCR will transfer up to 300 inmates per
23 month for the first four months of the out-of-state transfer program. Beginning in month 5 of
24 transferring inmates to out-of-state facilities, CDCR will increase the number of inmates
25 transferred out of state to 400 inmates per month. This rate of transfer will continue through the
26 end of fiscal year 2007/2008, totaling 5,060 inmates transferred to out-of-state facilities by the
27 end of June 2008. The out-of-state transfer of inmates will continue at a rate of 400 inmates per
28 month into fiscal year 2008/2009, and it is estimated that the out-of-state transfer of inmates will

1 reduce to 320 inmates per month for the months of December 2008 and January 2009, and finally
2 300 inmates during the month of February 2009 for a total of 8,000 inmates transferred out of
3 state. This will result in a reduction in CDCR's male population of approximately 3,860 inmates
4 by March 2008, and a total of 8,000 inmates by March 2009.

5 The out-of-state transfer of these nearly 5,060 inmates in fiscal year 2007/2008 will
6 reduce the number of non-traditional beds from approximately 18,000 to approximately 13,000
7 by the end of the 2007/2008 fiscal year. The use of out-of-state facilities is the only immediate
8 option available to reduce crisis level overcrowding, protect public safety, enhance security
9 within the prison and jail systems, and enhance the Receiver's ability to provide court-mandated
10 medical services to the inmate population.

11 8. Inmates eligible for involuntary out-of-state transfer must meet one of the
12 following criteria: (1) inmates with an active Immigration and Customs Enforcement (ICE) hold
13 (i.e. inmates who have been previously deported by the federal government and are criminal
14 aliens subject to deportation following the fulfillment of their criminal sentence), or (2) inmates
15 with a potential ICE hold (i.e. inmates who are criminal aliens and committed an aggravated
16 felony as defined by federal statute and may be subject to deportation following the fulfillment of
17 their criminal sentence). Attached as Exhibit A is a true and correct copy of a February 2, 2007
18 Memorandum outlining CDCR's procedure with regard to the out-of-state transfer of inmates.

19 Inmates who meet either of the above criteria (i.e. they have an active or a potential ICE
20 hold) will be prioritized for involuntary out-of-state transfer as follows (beginning with the first
21 inmates to be transferred): (1) inmates who have not received any visitation within the last two
22 years and cannot demonstrate family or supportive ties in California; (2) inmates who have not
23 received any visitation within the last year and cannot demonstrate family or supportive ties in
24 California; (3) inmates classified as Work Group/Privilege Group C/C meaning inmates who
25 voluntarily choose not to work and are not receiving any good time credits or time off of their
26 sentence for work; (4) inmates classified as Work Group/Privilege Group A2/B meaning inmates
27 who have worked in the past but are not currently working because there are no jobs available,
28 and are receiving good time credits; (5) inmates classified as Work Group/Privilege Group A1/A

1 meaning inmates who hold unskilled jobs such as in the kitchen or as porters; (6) inmates
2 classified as Work Group/Privilege Group A1/A but who hold jobs in an educational, vocational,
3 or substance abuse program; and (7) (the last group to be transferred) inmates with the longest
4 amount of time to serve.

5 In the event that the above criteria yield an insufficient number of inmates for transfer, the
6 same prioritized criteria listed above in items (1) through (7) will apply to those inmates without
7 an active or potential ICE hold, but who have committed an aggravated felony.

8 9. CDCR performed an initial review of inmates eligible for out-of-state transfer,
9 and 34,766 inmates were identified as eligible on a cursory level. Following a more thorough
10 review of eligibility (as described in paragraph 8 above), as of January 2, 2007, 17,908¹ inmates
11 were identified as eligible for transfer:

- 12 • 2,898 inmates have an active ICE hold. Of those 2,898 inmates:
 - 13 - 1,565 committed an aggravated felony
 - 14 - 1,282 have not received a visit in the preceding two years
 - 15 - 1,477 have not received a visit in the preceding year²
 - 16 - 2,162 are illegal aliens from Mexico
 - 17 - 175 are illegal aliens from El Salvador
 - 18 - 9 are Work Group/Privilege Group C/C (voluntarily choose not to
 - 19 work)
 - 20 - 434 are Work Group/Privilege Group A2/B (not assigned to an
 - 21 inmate work incentive assignment)
- 22 • 1,473 inmates have a potential ICE hold. Of those 1,473 inmates:
 - 23 - 725 committed an aggravated felony
 - 24 - 376 of those who committed an aggravated felony have
 - 25 not received a visit in the preceding year
 - 26 - 349 of those who committed an aggravated felony have not
 - 27 received a visit in the preceding two years
 - 28 - 739 have not received a visit in the preceding year³
 - 690 have not received a visit in the preceding two years
 - 933 are illegal aliens from Mexico
 - 63 are illegal aliens from Vietnam
 - 8 are Work Group/Privilege Group C/C (voluntarily choose not to
 - work)

25 1. As of January 2, 2007, inmates incarcerated at Richard J. Donovan Correctional Facility
26 (RJD) were not included in the totals. Approximately 1,138 eligible inmates are incarcerated at RJD.

27 2. No visiting information is available on 20 inmates with active ICE holds.

28 3. No visiting information is available on 6 inmates with potential ICE holds.

- 388 are Work Group/Privilege Group A2/B (not assigned to an inmate work incentive assignment)

- 13,537 inmates do not have either an active or potential ICE hold
 - 7,006 committed an aggravated felony and are not subject to deportation
 - 6,856 have not received a visit in the preceding year^{4/}
 - 6,124 have not received a visit in the preceding two years
 - 1,181 of these inmates who do not have an active or potential ICE hold are *not* assigned to an inmate work incentive assignment and have *not* had a visit in the preceding two years
 - 50 are Work Group/Privilege Group C/C (voluntarily choose not to work)
 - 2,376 are Work Group/Privilege Group A2/B (not assigned to an inmate work incentive assignment)

10. CDCR has a current contract with the Correctional Corporation of America (CCA) that permits expansion of the number of out-of-state beds as inmates become available for transfer. CCA provided a schedule to CDCR that permits up to 4,400 beds for California use. CDCR will concurrently negotiate contracts for additional beds with private and/or public vendors to meet the schedule detailed in paragraph 7.

11. This out-of-state transfer of inmates will further improve inmates' access to medical care at CDCR. Inmates selected for out-of-state facilities will undergo a comprehensive medical screening and only those inmates who meet the medical criteria, as established by the Receiver, will be selected for transfer. The reduction in population at CDCR institutions will permit medical staff to focus resources on a smaller population. Additionally, these transfers will result in reduced staffing requirements and free space at existing facilities for enhanced medical services. A reduced inmate population will ease prison living environments and decrease violence, and will permit medical staff to focus on non-emergent services as is currently required in existing prisons. To date, approximately 360 inmates are currently confined in out-of-state facilities.

12. AB 900 will also reduce California's prison overcrowding through the use of in-fill beds. "In-fill beds" are those beds that will be added to existing capacity in current prisons. The creation of in-fill beds will not require the construction of new prisons; but rather the construction of new facilities at existing prisons. In-fill beds will be created as either dorms or

4. No visiting information is available on 50 inmates without an active or potential ICE hold.

1 cells. In-fill beds, like the out-of-state transfer of inmates, are designed to eliminate CDCR's
2 reliance on non-traditional beds, and will permit CDCR to address population growth and the
3 current overcrowding in existing prison facilities. As new in-fill beds are constructed, AB 900
4 mandates the reduction in a proportionate number of non-traditional beds, until non-traditional
5 bed use is entirely eliminated.

6 13. AB 900 also provides for the creation of 16,000 re-entry beds, which are beds in
7 small, secured facilities (500 inmates maximum per facility), that are operated by CDCR but are
8 geographically closer to communities and are focused on providing rehabilitation services and
9 preparing inmates for re-entry into society.

10 14. The addition of medical and mental health beds is also provided for by AB 900.
11 Indeed, there are 8,000 total medical/mental health beds. The medical beds will be created in
12 cooperation with the *Plata* Receiver.

13 15. Parole reduction strategies will result in the reduction of CDCR's inmate
14 population. While AB 900 does not address parole accountability, CDCR has continued to
15 implement parole population reduction strategies through alternative programming in lieu of
16 returning inmates to prison. These strategies are proving effective in reducing California's prison
17 population and have led to CDCR's continued expansion of these alternative sanction programs
18 in the 2007/2008 fiscal year.

19 As evidence of CDCR's successful parole reduction strategies, the CDCR Spring Adult
20 Population projections, though originally estimated in the fall of 2006 to be 120,117 parolees,
21 were later adjusted in June 2007 to 122,833 parolees, reflecting an increase of 2,716 parolees. At
22 the same time that the parole population increased, parolee referral to programs also increased,
23 and the parole revocation rate remained steady. This evidences the fact that parole agents are
24 referring parolees to programs instead of recommending incarceration. This trend and change in
25 parole culture will continue to be monitored as a benchmark for CDCR's efforts in the area of
26 parole reform.

27 16. Alternative programming, however, only accounts for one aspect of CDCR's
28 overall implementation of parole accountability strategies. Reduction in the parole population

1 requires, as a matter of public safety, a validated risk and needs assessment to evaluate an
2 individual's risk of re-offending and threat to public safety. Parole decisions are now being made
3 based upon a subjective determination of individual circumstances and correctional judgment.
4 Secretary Tilton, however, directed that a statistically validated decision-making matrix, with
5 input from national experts, be developed to provide clear and objective decisions throughout
6 CDCR. Furthermore, Secretary Tilton directed that a policy be issued clarifying when parolees
7 must be discharged from parole. These strategies will lead to further development of parole
8 reform strategies after thoughtful evaluation and implementation of CDCR's parole
9 accountability model.

10 17. **California Penal Code Section 3001 Administrative Discharge.** Penal Code §
11 3001 addresses the statutory requirements for DAPO to consider prior to discharging a parolee
12 from supervision. Specifically, parolees initially released from prison after serving a period of
13 incarceration for a non-violent offense (a conviction *not* delineated in Penal Code § 667.5(c)),
14 and who have been compliant with the terms of their parole continuously for one year since their
15 release, *shall be discharged on the 30th day after their first year* of parole (or at the 13th month of
16 their parole term), unless the recommendation to retain them on parole has been made to, and
17 approved by, the Board of Parole Hearings (BPH). Similarly, parolees initially released from
18 prison after serving a period of incarceration for a violent offense (as defined by Penal Code §
19 667.5(c)), and who have been compliant with the terms of their parole continuously for two years
20 since their release, *shall be discharged the 30th day after their second year* of parole (or at the
21 25th month of their parole term), unless the recommendation to retain has been made to, and
22 approved by, the BPH.

23 Current organizational practice within DAPO results in fewer parolees being discharged
24 from parole at the 13th and 25th months than is authorized in California Penal Code § 3001. In
25 order to ensure complete compliance with Penal Code § 3001, DAPO Director Thomas Hoffman
26 issued a memorandum dated May 15, 2007 clarifying when parolees must be discharged from
27 parole. Attached as Exhibit B is a true and correct copy of Thomas Hoffman's May 15, 2007
28 Memorandum regarding Penal Code § 3001 Compliance Policy Statement.

1 Departmental databases identify 7,642 parolees who potentially meet the requirements for
2 discharge after 12 months of successful parole, but were nonetheless retained on parole during
3 the past 12 months. CDCR electronic databases do not quantify the reasons for retention, but in
4 the majority of these instances, the parole agent lacked specific administrative direction to
5 discharge the parolee and therefore referred the case to the BPH. The BPH, in turn, chose to
6 retain the majority of these cases on parole.

7 The May 15, 2007 Memorandum, with specific administrative parameters and
8 administrative oversight, is anticipated to result in the discharge of between 2,000 to 4,000
9 additional parolees from parole in the next 12 months. Currently, discharge decisions are made
10 at the supervisory level. To ensure full implementation of this policy, however, all discharge
11 recommendations will be reviewed at the Parole Administrator level (which is one level above
12 the supervisory level). This change in oversight will require management-level executives to
13 make the discharge decision and will result in a more consistent application of the policy.
14 Additionally, CDCR will electronically track the discharges by parole region to ensure proper
15 compliance. This data will be added as a performance measurement to the regular statistical
16 analysis (COMSTAT) system currently employed by CDCR.

17 18. **Risk and Needs Assessment Tool.** The Division of Adult Parole Operations
18 (DAPO) implemented a risk and needs assessment tool in each of the 33 institutions: the
19 Correctional Offender Management Profiling for Alternative Sanctions (COMPAS). COMPAS
20 is a research-based, risk and needs assessment tool for criminal justice practitioners to assist
21 them in the placement, supervision, and case-management of offenders in community settings.
22 To date, DAPO has completed over 45,000 pre-release assessments of inmates to be released
23 from the institutions and placed on parole. CDCR contracted with UCLA Professor David
24 Farrabee to statistically validate COMPAS and determine if the assessments are producing
25 accurate and effective recommendations. Further, a study is being conducted to evaluate the
26 predictive validity of COMPAS in terms of its ability to effectively identify key risk and needs
27 factors in the parole population.

1 19. **Decision-Making Matrix.** Since November 2006, DAPO has undertaken
2 extensive research into the use and effectiveness of a parole-violation decision-making matrix
3 with the support of corrections expert Dr. Joan Petersilia and other topic area experts. This tool
4 has been shown to improve organizational decision-making consistency, as well as help to
5 establish a culture of determining sanctions based on policy-driven rationale and then tailoring
6 the sanction to the specific risk and needs of the parolee. When supported by evidence-based
7 programs, such as COMPAS, this type of matrix has been proven to play a meaningful role in the
8 overall reduction of recidivism rates among the parolee population. DAPO anticipates that a
9 decision-making matrix will be ready for a pilot deployment by the end of 2007.

10 Other states that have employed strategies similar to the decision-making matrix
11 described above have experienced significant reductions in parole return-to-custody rates, in turn
12 directly reducing the prison population. The National Institute of Corrections assisted a number
13 of other states with the implementation of a policy-driven parole model including the decision-
14 making matrix. All of those such states report that they have experienced reduced recidivism
15 rates. For example, Georgia reported an 11% reduction in the first year following
16 implementation of the matrix and its related components. Similarly, Kansas reported a 6%
17 reduction, and Texas reported a reduction by 14,000 admissions after implementation of the
18 parole model. If California's effort resulted in even a 6% reduction in violations, that would
19 amount to 5,840 fewer violations and a reduction in 1,920 prison bed days.

20 20. **Alternative Sanction Programs.** The DAPO is actively expanding its programs
21 that are available as remedial sanctions in lieu of parole revocation in response to parole
22 violations. CDCR has program capacity for 4,175 parolees at an annual cost of \$82,648,665. By
23 sanctioning these parole violators, rather than returning them to CDCR custody, it is estimated
24 that CDCR will reduce its monthly intake and free-up much needed bed space. CDCR
25 recognizes that a number of logistical issues prevent these remedial sanction programs from
26 being filled, however CDCR is committed to addressing and overcoming these obstacles such
27 that these programs will reach capacity.

1 21. I created additional parameters for discharge that will provide parole agents in the
2 field with necessary administrative direction and clear expectations. The parameters are as
3 follows: all parolees who have successfully completed a 12 month consecutive period of parole
4 without revocation and who meet the following criteria *will* be discharged in accordance with
5 Penal Code section 3001: (1) no serious or violent controlling or non-controlling offense (as
6 defined in Penal Code §§ 667.5 or 1192.7); (2) no conviction for serious or violent offense in the
7 preceding 10 years; (3) no conviction for any offense requiring registration under Penal Code §
8 290; and (4) not classified as a gang member.

9 This directive will result in the necessary relief of prison beds in the next 12 months and
10 will enable CDCR to pursue other aspects of parole reform described previously. Historically,
11 DAPO discharges approximately 13,800 parolees annually at the 13th month, and 500 at the 25th
12 month. It is anticipated that there will be an increase in these discharge numbers during the first
13 year that the policy is in effect. By discharging more parolees from supervision, it is estimated
14 that CDCR will experience a reduction in the number of parolees returned to custody for various
15 parole violations. Thus, while it is difficult to quantify, CDCR anticipates that this policy will
16 reduce the prison population.

17 22. As stated in paragraph 5 above, CDCR anticipates housing 164,599 male inmates
18 in March 2008, and 167,614 male inmates in March 2009. These projected figures, however, do
19 not account for the impact that the anticipated out-of-state transfers and the DAPO May 15, 2007
20 Memorandum clarifying Penal Code section 3001 administrative discharge will have on the male
21 prison population. Taking into account these two factors, it is estimated that CDCR will house
22 in-state approximately 159,939 male inmates in March 2008, and 162,674 male inmates in March
23 2009. These population projections do not take into account the additional parole reduction
24 strategies discussed above, such as alternative programming, the COMPAS risk and needs
25 assessment tool, the decision-making matrix, and alternative sanctions programs, which are
26 expected to further decrease CDCR's in-state male prison population.

27 23. Based on CDCR's current plan for continued out-of-state transfers, AB 900
28 implementation, and administrative parole changes, it is planned that the emergency conditions

1 caused by non-traditional beds should be eliminated in 2009. When the emergency conditions
2 are eliminated, the Emergency Proclamation will be rescinded.

3

4 I declare under penalty of perjury that the foregoing is true and correct. Executed in
5 Sacramento, California, on May 16 2007.

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SCOTT M. KERNAN
Chief Deputy Secretary, CDCR Division of Adult
Institutions

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **MARCIANO PLATA, et al. v. ARNOLD SCHWARZENEGGER, et al.**

No.: **C 01-1351 TEH**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On **May 16, 2007**, I served the attached

**DECLARATION OF SCOTT KERNAN IN SUPPORT OF DEFENDANTS' REPORT IN
RESPONSE TO THE COURT'S FEBRUARY 15, 2007 ORDER**

by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on **May 16, 2007**, at San Francisco, California.

J. Tucay

Declarant

J. Tucay
Signature